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Infant Male Circumcision: A Catholic theological and bioethical analysis

David Albert Jones

Abstract

Infant male circumcision (IMC) has become controversial among Catholics and many have criticised the practice of routine IMC, still widely performed in the United States. Others have gone further, claiming that circumcision has been condemned explicitly by the Church and criticising IMC as 'mutilation' and hence prohibited implicitly by Catholic moral principles. However, closer examination of the Catholic tradition shows that the Church regards IMC as having been a means of grace under the Old Covenant and, more importantly, in the flesh of Jesus. This positive theological account of IMC cannot be evaded by invoking a supposed historical distinction between milah (a token cut) and periah (the complete removal of the foreskin). The Church has never condemned IMC as mutilation, and while IMC carries some risk, there is no evidence that it inflicts per se disabling mutilation. A reasonable body of medical opinion regards IMC as conferring net health benefits.

The rites of children

This paper concerns the ethics of infant male circumcision (IMC) especially, though not only, as this is practiced within contemporary Judaism. A proper ethical evaluation of IMC is of particular importance in the United States where IMC is also practiced widely for non-religious reasons. IMC has also become a significant issue for human rights law, both in the United States and in Europe, as it is alleged that IMC contravenes the rights of the child (Greenfield 2013; Morris and Tobian 2013; Schuz 2015). From a Catholic perspective this is not only a bioethical issue but also raises questions as to how Jewish ritual practice should be understood in the context of contemporary Catholic theology.

In a very different theological context, Thomas Aquinas asked whether, for the sake of their eternal salvation, the children of Jews should be baptised against the wishes of their parents. His answer was very clear, even on the (then prevalent) assumption that baptising such a child would rescue the child from eternal death, it would still be wrong to do so. This is because baptising a child against the will of his or her parents would infringe natural justice, in virtue of which children are under the care of their parents:

A child, before it has the use of reason, is ordained to God, by a natural order, through the reason of its parents, under whose care it naturally lies, and it is according to their ordering that things pertaining to God are to be done in respect of the child (*Summa Theologiae* IIIa Q.68 art.10 ad 3).

Besides which, Thomas states, even the children of the ancients 'were saved through the faith of their parents' (*ST* IIIa Q.68 art.10). The allusion here is to circumcision which, according to Augustine, 'was instituted among God's people, as "a seal of the justice of faith," [and] availed little children unto sanctification by cleansing them from original sin' (Augustine, *De Nup. et Concup.* I, quoted in Thomas Aquinas, *ST* IIIa Q.70 art.4 *sed contra*). Such rites expressed the faith of the parents and not only bequeathed to the child a religious and cultural identity, but also provided an occasion for the child to receive the immeasurable gift of Divine grace.

Like virtually all medieval theologians, Thomas Aquinas thought that the religious practices of unbelievers, whether pagans or heretics, should not generally be tolerated, except to avoid evils such as social disturbance or scandal (*ST* IIaIIae Q.10 art.11). However, Thomas makes an exception for the observances of Judaism. Even though he regarded Jewish practice as being fulfilled in

Christianity, its rituals nevertheless have an enduring significance, bearing witness to the Christian faith 'in a figure, so to speak' (*ST Ilallae* q.10 art.11 *corpus*; for further treatment of Thomas's attitude to Jewish practice see, amongst others, Hood 1995, Levering 2002, Boguslawski 2008, Marshall 2009, Tapie 2012). From a Thomist perspective, there is thus a positive Christian reason to permit Jewish observances such as circumcision.

This tolerant attitude of Thomas Aquinas is in marked contrast to recent attempts in the United States (most notably in San Francisco, see for example Medina 2011) and in various European countries (most notably in Cologne, see for example Merkel and Putzke 2013) to prohibit IMC. To be sure, the primary aim of these attempts has not been to suppress the Jewish religion. In the United States the focus of contention has been the practice of routine IMC, performed for its claimed prophylactic health benefits. In Europe the legal cases have generally concerned the circumcision of pre-pubescent boys within the Muslim community. Nevertheless, while these cases have not focused on Jewish practice they directly threaten Jewish practice. If IMC without therapeutic benefit contravenes the fundamental human rights of the child and the ethics of good medical practice, then it could have no place in healthcare notwithstanding its religious significance.

Catholic 'intactivists'

Opposition to IMC is not only an intellectual stance but is a vigorous political movement, sometimes self-described as 'intactivism'. Its proponents lobby governments, engage with court cases and propose ballot initiatives. They maintain websites and distribute pamphlets. They fund research, publish papers, and engage in academic debate. A recent exchange in the *American Journal of Bioethics* exemplifies this engagement. The authors of the initial target article noted how many of the responses to their paper were by opponents of the practice.

A target article can be expected to draw fire... from two directions. However, the criticism [of our paper] was entirely one-sided. None of our respondents were defenders of routine neonatal circumcision. By contrast, those who take circumcision to be mutilation and child abuse were amply represented. There are a number of possible explanations for this, but one of these is that those who oppose circumcision are more vocal because they have coalesced into an activist movement (Benatar and Benatar 2003).

The movement to ban IMC is not primarily Catholic but it does include a Catholic faction. Three important exemplars of what one might call 'Catholic intactivism' are Petrina Fadel, John Deitzan and David Lang. Fadel published an open letter to the Catholic Medical Association, reproduced in the *Linacre Quarterly*, calling for Catholic physicians to oppose IMC (2003a) and subsequently founded the organisation 'Catholics Against Circumcision'. Deitzan's short article from a local diocesan newspaper (2004) is perhaps the most frequently reproduced Catholic attack on IMC, appearing on a number of websites and providing the basis of the pamphlet *Catholic Teachings On Circumcision* (available from www.catholicsagainstcircumcision.org). Lang's more recent article (2012) represents the most sustained argument to date for the proposition that routine IMC is incompatible with Catholic moral principles.

These Catholic opponents of IMC put forward a number of arguments against the practice of which three are particularly prominent. In the first place it is argued that Catholics are forbidden from practicing circumcision 'for any reason'. This teaching is said to be promulgated at the Council of Vienne (1311) and the Council of Florence (1438-1445) (Deitzan 2004; Lang 2011).

In the second place it is argued that 'a crucial distinction must be drawn between the modern version of so-called "circumcision" and the ancient ceremony properly called "circumcision," which

was commanded by God under the Abrahamic–Mosaic covenant’ (Lang 2012, 101). The former currently involves the removal of the entire foreskin by a procedure that the Talmud terms *periah* whereas, according to Lang, the latter, termed *milah*, was ‘merely a token truncation of the overhang tip of the foreskin’ (2012, 101).

In the third place it is argued that modern IMC (involving or equivalent to *periah*) constitutes mutilation, as this term is understood in the Catholic moral tradition, and is thus condemned, implicitly, by the *Catechism of the Catholic Church* (2297). This is perhaps the most common argument of Catholic intactivists (see for example Deitzan 2004, Fadel 2003a, Fadel 2003b, Fadel 2012, Lang 2011, or Lang 2012). Maiming or amputation for non-therapeutic reason would be wrong even if freely requested by an adult, ‘*a fortiori* no one else should be permitted to authorize non-remedial surgery’ on a nonconsenting infant (Lang 2012, 100).

Conciliar teaching on Jewish observances

According to Lang (2011), following Deitzan (2004), ‘the General Council of Vienna (1311)’, states that ‘Christians may not be enticed into Judaism; neither may they be circumcised *for any reason*’. However, it seems that Deitzan here confuses the General Council of Vienne (in France) held in 1311 with the regional synod of Vienna (then under the Kingdom of Bohemia) held in 1267. The General Council contains no reference to Jews or Judaism whereas the regional synod includes a number of restrictions of Jewish activity. However, the regional synod has limited authority.

The second reference cited by Deitzan (2004), and also by a number of others (including Fadel 2003a), is important and worth quoting in full. It is from *Cantate Domino*, the Bull of union with the Copts promulgated by Pope Eugenius IV at the 11th Session of the Council of Florence, 4 February 1442.

[The Holy Roman Church] firmly believes, professes and teaches that the legal prescriptions of the Old Testament or the Mosaic law, which are divided into ceremonies, holy sacrifices and sacraments, because they were instituted to signify something in the future, although they were adequate for the divine cult of that age, once our lord Jesus Christ who was signified by them had come, came to an end and the sacraments of the new Testament had their beginning. Whoever, after the passion, places his hope in the legal prescriptions and submits himself to them as necessary for salvation and as if faith in Christ without them could not save, sins mortally. [The Church] does not deny that from Christ's passion until the promulgation of the gospel they could have been retained, provided they were in no way believed to be necessary for salvation. But it asserts that after the promulgation of the gospel they cannot be observed without loss of eternal salvation. Therefore it denounces all who after that time observe circumcision, the Sabbath and other legal prescriptions as strangers to the faith of Christ and unable to share in eternal salvation, unless they recoil at some time from these errors. Therefore it strictly orders all who glory in the name of Christian, not to practise circumcision either before or after baptism, since whether or not they place their hope in it, it cannot possibly be observed without loss of eternal salvation. (Tanner 1990, 576)

The context for this pronouncement was the fact that Coptic Christians, with whom the Pope was seeking to restore unity, commonly practiced infant male circumcision, as they do to this day. This was not out of a belief in the enduring validity of the Mosaic law, but as a received custom common to many Middle-Eastern and North African peoples. The Bull imposed a requirement on Coptic

Christians to refrain from circumcision and their unwillingness to do so was one of a number of reasons for the failure of this attempt at reunion.

It should be noted that the Bull is directed specifically to 'all who glory in the name of Christian'. Neither this Council, nor in any other medieval pope or council, nor any Catholic city or country, prohibited non-Christian Jews from practicing IMC on Jewish infants. Still less does this teaching have anything to say about the contemporary routine clinical performance of IMC in the United States, not performed as 'the legal prescriptions of the Old Testament or the Mosaic law' but for its claimed health benefits. Nor is there anything in this decree or from any other pope or council that states or implies that IMC is physically harmful or is inherently contrary to the natural law. IMC is clearly not condemned in this way, for the Pope states that, at one time, it had been 'adequate for the divine cult'.

Grace bestowed by circumcision

Thomas Aquinas asks whether circumcision, as instituted by God and commanded for the sons of Abraham, was a cause of sanctifying grace. This is a question on which he changed his mind. Earlier in his career Thomas held that, while circumcision removed original sin and bestowed grace it did not bestow all the effects of grace, such as the ability to resist temptation and to fulfil the law (*In Sent.* IV D.1 Q.2 art.4). However, in the *Summa Theologiae*, Thomas writes that his earlier opinion cannot stand because 'the least grace can resist any degree of concupiscence, and avoid every mortal sin' (*ST* IIIa Q.70 art.4 corpus).

There is a difference in the way that circumcision bestowed grace and the way that baptism bestows grace. For the first acted as a sign of faith whereas the second acts by the power of the sacrament, as an instrument of Christ's passion (*ST* IIIa Q.70 art.4 corpus). Nevertheless, while circumcision bestowed grace in a different way to baptism, there was nothing lacking in the grace that was bestowed.

Circumcision was instituted by God, whose 'works are perfect' (*ST* IIIa Q.70 art.2 *sed contra*, quoting Deuteronomy 32:4). Thomas therefore affirms the fittingness of the rite of circumcision as a salutary sign of faith. This is not to say that circumcision was necessary for salvation, for before circumcision was instituted children could be saved by the faith of their parents without this particular sign, though Thomas thinks it probable that parents always offered up some prayers or sacrifices for their children. The same logic applies to the grace given to female children before the coming of Christ. Nevertheless, in this respect baptism is a more perfect sign of faith than circumcision, for baptism shows that Christ is the cause of salvation for all, both male and female (*ST* IIIa Q.70 art.2 ad 4).

There is no hint in any of Thomas's writings that IMC might constitute mutilation. Indeed, the idea that circumcision might be regarded as 'mutilation' does not occur to Thomas even as a possible objection to the fittingness of the rite.

In seeking to build his case that IMC is mutilation, Lang quotes Ambrose as saying 'Nature has created nothing imperfect in man, nor has she bade it be removed as unnecessary' (2012, 122, cited through a secondary source: Fleiss and Hodges 2002, 100). It is worth looking at this quotation in its original context.

For the letter circumcises a small portion of the body; the understanding spirit keeps the circumcision of the whole soul and body; that the superfluous parts being cut off, (for nothing is so superfluous as the vices of avarice, the sins of lust, which nature had not, but sin caused,) chastity might be observed, and frugality loved. The sign therefore is bodily

circumcision, but the truth is spiritual circumcision, the one cuts off the member, the other cuts off sin. Nature has created nothing imperfect in man, nor has she commanded it to be taken away as if it were superfluous, but that they who cut off a part of their body might perceive that sins were much more to be cut off... (Ambrose 1881, letter 74.4, 438-439).

Thomas uses very similar language in his commentary on Philippians: 'For the circumcision of the flesh cuts off superfluous flesh; but the circumcision of the spirit is that by which the Holy Spirit cuts away superfluous internal desires' (*ad Phil.* 3.1). In both cases the external cutting of circumcision is taken as symbolic of the need to cut off the sinful desires of the heart. Ambrose states that the foreskin is *not* 'superfluous' in the sense that nature does not *command* its removal. In contrast Thomas states that the foreskin *is* 'superfluous' in the sense that its removal is *permissible* as it is not harmful to nature. In either case, the unnecessary removal of 'a small portion of the body' is contrasted with the necessary removal of sinful desires, which are superfluous in the stronger sense that they need to be expunged. In these passages neither Ambrose nor Thomas state or imply that circumcision, because not demanded by nature, is therefore mutilation.

The circumcision of the Christ-child

Thomas discussed circumcision in three contexts in the *Summa Theologiae*. He cites circumcision as an example of the ceremonial precepts of the Old Law (*ST Iallae Q.102 art.5 ad 1*), he discusses circumcision in relation to baptism (*ST IIIa Q.70*), and he discusses the significance of the circumcision of Jesus (*ST IIIa Q.37 art.1*). For circumcision was not only given to Abraham as a sign of the covenant and incorporated into the Law given to Moses but was received by Jesus in his own flesh. In relation to the circumcision of Jesus, Thomas gives seven reasons why it was fitting:

First, in order to prove the reality of His human nature...

Secondly, in order to show His approval of circumcision, which God had instituted of old.

Thirdly, in order to prove that He was descended from Abraham, who had received the commandment of circumcision as a sign of his faith in Him.

Fourthly, in order to take away from the Jews an excuse for not receiving Him, if He were uncircumcised.

Fifthly, 'in order by His example to exhort us to be obedient' [Bede, *Hom. x in Evang.*]. Wherefore He was circumcised on the eighth day according to the prescription of the Law (Leviticus 12:3).

Sixthly, 'that He who had come in the likeness of sinful flesh might not reject the remedy whereby sinful flesh was wont to be healed.'

Seventhly, that by taking on Himself the burden of the Law, He might set others free therefrom, according to Galatians 4:4-5: 'God sent His Son . . . made under the Law, that He might redeem them who were under the Law' (*ST IIIa Q.37 art.1 corpus*).

This catalogue of reasons, like so much in Thomas Aquinas, is drawn from earlier thinkers and is a somewhat uneven list, mixing fundamental theological themes with homiletic and polemic material. Nevertheless, it is clear that Thomas regards the circumcision of Jesus as an essential element of his Jewish identity, which itself was necessary to Jesus's role in salvation.

In the Middle Ages, and even into the twentieth century, the feast of the circumcision of Jesus was celebrated on 1 January, and was the subject of many sermons and not a few paintings. The image

of Joseph (or in some paintings, such as that by Rembrandt, of Mary) tenderly holding Jesus as he is circumcised is a vivid image of grace bestowed by circumcision. In the case of Christ, the beneficiary of the grace bestowed in circumcision is not one child only but the whole human race.

Catholic theology understands the significance of the circumcision of Christ in relation to his death when the whole law would be fulfilled. Henceforth it is through baptism, which unites Christians to the passion, death and resurrection of Jesus Christ that Christians fulfil the commandment given to Abraham. Nevertheless, as David and Michael Benatar rightly argue, 'even if one believes that the covenant of the circumcision has been superseded and that circumcision is no longer required, Catholics opposed to circumcision need to explain how God could have commanded what they take to be immoral' (Benatar and Benatar 2003, 7).

A convenient distinction

Fadel and Lang attempt to square their opposition to IMC with Church's affirmation of circumcision as a precept of the Old Covenant (accepted and fulfilled in Jesus) by the expedient of denying that these practices were physically comparable. Fadel asserts that 'circumcision during Peter's century typically involved removing only the tip of the foreskin, not the complete foreskin as is done today' (2003b, 24). Lang claims that current practice 'was instituted around the middle of the second century AD by the rabbinical overseers of post-Old Testament Judaic religious identity' (2012, 101). This date, just after the close of the New Testament, allows Fadel and Lang to answer the criticism that, in opposing the contemporary practice of IMC, they are opposing the rite as it was practiced in Biblical times.

In favour of Lang's claim is the evidence of the *Jewish Encyclopedia* which states that '[i]n order to prevent the obliteration of the "seal of the covenant" on the flesh, as circumcision was henceforth called, the Rabbis, probably after the war of Bar Kokba, instituted the "peri'ah" (the laying bare of the glans), without which circumcision was declared to be of no value (Shab. xxx. 6)' (Hirsch et al. [1906] 2002-2011).

The war of Bar Kokba (132-135 CE) was a Jewish revolt against Roman rule, provoked in part by Roman attempts to ban circumcision. This revolt was the culmination of a cultural struggle that began with the spread of Hellenic culture throughout the ancient world in the wake of the conquests of Alexander the Great in the fourth century BCE.

More particularly, it was the Seleucid Emperor Antiochus IV Epiphanes, who came to the throne in 175 BCE, who first sought to impose Greek mores on the Jewish people. Emblematic of Hellenic culture was the institution of the gymnasium where men would compete naked. Jews seeking to embrace Hellenization therefore underwent various operations or procedures to create or mimic an intact foreskin. 'So they built a gymnasium in Jerusalem, according to Gentile custom, and removed the marks of circumcision, and abandoned the holy covenant' (1 Maccabees 1.14-15). This attempt to enforce Hellenization led to the Maccabean revolt (167 to 160 BCE), described in the books of Maccabees.

Lang and Fadel thus rely on a fairly standard account of the origin of the present rite of circumcision. However, it is difficult to justify their confidence that the circumcision of Jesus 'involved removal of less of the foreskin than contemporary Jewish circumcision' (Benatar and Benatar 2003, 7). There is no detailed description of Jesus's circumcision in the Bible. Indeed, there is no earlier description of any Jewish circumcision in comparable detail to that given in the second century CE. What we know is that the ritual of the *peri'ah* was in existence in the second century CE, and was held by rabbinic

authorities at that time to be a requirement for valid Jewish circumcision. However, there is nothing in the ancient sources to show that this form of the ritual was only instituted at that time.

It is attested from multiple sources that during the period between the Maccabean revolt (167 BCE) and the Bar Kokba revolt (135 CE) some Jews sought to disguise or reverse their circumcision, some omitted to circumcise, and some practiced circumcision that did not involve removing the complete foreskin. It seems reasonable to conclude that this context explains the rabbinic insistence in the second century CE that *periah* must henceforth be regarded as a necessary element of Jewish circumcision. However, even if scholars are correct in arguing that this element only became a *requirement* for Jewish circumcision at this time, this would not demonstrate that this form of the ritual was only *instituted* at that time. Furthermore, even if it is granted, for the sake of argument, that this form of the ritual was only instituted in reaction to Hellenization, this would suggest an earlier date, around the time of the Maccabean revolt.

Recent scholarship has discovered evidence of the practice of *periah* precisely in this context. In the book of Jubilees (from the second century BCE) God warns Abraham about a future generation who 'will not circumcise their sons in accord with this entire law because *they will leave some of the flesh of their circumcision* when they circumcise their sons' (Jubilees 15:33 emphasis added). Concerning this passage Theissen states that 'most interpreters see here a reference to the practice of *periah*, in which the entirety of the foreskin is removed' (2014, 385). Theissen here cites Rubin (2003) but Rubin reserves judgment on this point, referring to the differences in the translations of Charles and VanderKam and speculating that these may reflect underlying textual differences. However, VanderKam confirmed to me in personal communication that the critical texts constructed by Charles (in 1895) and his own (in 1989) do not differ on this passage, and the difference is due to a mistake in translation by Charles. The *Jewish Encyclopedia* of 1906 would not have had access to an accurate translation of this passage from the book of Jubilees.

There seems every reason therefore to believe that *periah* was practiced by at least some Jews in the second century BCE and that during this period omitting the *periah* was associated with Hellenism and was regarded by its opponents, whether correctly or incorrectly, as an innovation.

Among scholars of the New Testament it is disputed whether or how far Jesus was Hellenistic in his practice of Judaism. It is also disputed how far Jewish practice in rural Galilee in the first century was Hellenised. Given such uncertainties, and given the evidence from the book of Jubilees, and from the first book of Maccabees, it is simply impossible to pronounce confidently on whether the circumcision of Jesus 'involved removal of less of the foreskin than contemporary Jewish circumcision'. It may have done, but current scholarship does not provide the confidence that Catholic intactivists require. Indeed, it seems highly likely that the practice of *periah*, which is the basis for Lang and Fadel's convenient distinction, was already well established among at least some Jews more than a century before the birth, and the circumcision, of Jesus.

It should also be noted that, while Lang and Fadel both place weight on the distinction in practice between *milah* and *periah*, they provide no argument that would show how *milah* could be morally justified. As others have observed, 'given Ms Fadel's arguments about circumcision, it is hard to see how she could think that even this more limited form of circumcision is morally permissible' (Benatar and Benatar 2003, 7). If, according to Lang, 'no one else should be permitted to authorize non-remedial surgery' (Lang 2012, 100), then no one could properly authorize IMC for religious reasons, however limited the extent of the surgery. Hence Lang has no relevant grounds to exempt 'milah for religious purposes' (Lang 2012, 127) from his proposed legal prohibition.

The distinction between *periah* and *milah* functions within the arguments of Lang and Fadel merely as a rhetorical distraction. It allows them to evade the force of the Biblical counter example by claiming to criticise only a distinct post-Biblical practice. Having made this distinction these authors then proceed to gloss over the moral implications of their criticism for (their account of) Biblical practice.

Is circumcision mutilation?

Fadel, Deitzan, and Lang all argue that contemporary IMC (involving or analogous to *periah*) is 'mutilation' as this term has been understood in the Catholic moral tradition, and is therefore condemned implicitly by the *Catechism of the Catholic Church*. The *Catechism* states that 'Except when performed for strictly therapeutic medical reasons, directly intended amputations, mutilations, and sterilizations performed on innocent persons are against the moral law' (CCC 2297).

The *Catechism* here draws on two encyclicals of John Paul II, *Evangelium Vitae* (1995, n.3) and *Veritatis Splendor* (1993, n.80) both of which are quoting the Second Vatican Council document *Gaudium et Spes* (1965, n.27). Among these authoritative sources, the discussion in *Veritatis Splendor* is of particular importance as it includes 'mutilation' in a list of actions that are 'incapable of being ordered' to God. Such acts are termed 'intrinsically evil' (*intrinsece malum*) and the Church teaches that 'per se and in themselves, independently of circumstances [they] are always seriously wrong by reason of their object' (*Veritatis Splendor* n.80).

Lang (2012) helpfully sets out a number of quotations from the moral tradition in which mutilation is condemned as contrary to the moral law. This tradition is succinctly expressed by Pius XI in saying that it is never morally permissible for private individuals 'to destroy or mutilate their members, or in any other way render themselves unfit for their natural functions, except when no other provision can be made for the good of the whole body' (Pius XI 1930, n.71 quoted in Lang 2012, 109).

Before examining the question of whether circumcision is 'mutilation' in this sense, it is necessary to point out an unfortunate ambiguity in the way the tradition uses the term 'mutilation' (for which, see Kelly 1956). As Lang recognises, this term is sometimes used in a 'broad sense' to include 'minor' mutilations that involving cutting or modifying the body, but not in a way that compromises the functional integrity of organs. Alternatively, it is used in a 'strict' or proper sense to cover major mutilation where bodily functions are destroyed or diminished (Lang 2012, 108 citing Hayes and Hayes 1997, 153–154). Furthermore, some theologians refer to 'licit mutilation' (Kelly 1956, 330) in the case where a part is destroyed or removed but where this is done for the sake of the body as a whole. Lang appeals to similar language when asking whether circumcision is 'defensible mutilation' (2012, 118). However, the condemnation of 'mutilation' as 'intrinsically evil' implies that there could not be any 'licit' or 'defensible' mutilation *properly so called*. For the sake of clarity, it seems better to limit the use of the term 'mutilation' to the strict sense, according to which it implies a major destruction of function not only at the level of the part but also at the level of the body as a whole.

Examples of mutilation (in this strict sense) include direct sterilisation, castration of boys to preserve their singing voices, amputation of a healthy limb to address body dysmorphia, as well as mutilation as a means of torture. It should be noticed that the *Catechism*, the encyclicals of John Paul II and the Second Vatican Council all place mutilation first in the context of physician and mental torture. Within these official documents the term was used in a 'strict' sense and did not include skin grafts or blood donation, cosmetic surgery or the practices of tattooing or piercing the body. This is not to say that such modifications of the body are always morally justifiable but rather that the justification requires consideration of the particular circumstances, risks, burdens and benefits. In contrast

‘mutilation’ in the strict sense is harmful per se and is condemned ‘independently of circumstances’ (*Veritatis Splendor* n.80).

Lang asserts that circumcision involving the complete removal of the foreskin (*periah*) is mutilation in exactly this sense because it destroys a functioning part of the male sexual organ and ‘always inflicts *permanent disabilities* in terms of protective and sexual functions for males (as boys and men)’ (2012, 125, emphasis added). This is a strong claim and, if warranted would justify the description ‘mutilation’.

Consider, however, a claim that Lang cites with approval, that the foreskin, ‘provides the penis with a reservoir of skin which is *needed* during erection’ (2012, 104 citing Garcia 1995, emphasis added). The same assertion is stated even more clearly in an article by Peter Clark: ‘the foreskin is... penile skin *necessary* for a natural erection’ (2006, emphasis added). Now if the foreskin were ‘necessary’ to provide skin ‘needed’ for an erection, then circumcision would render erection impossible at least in general or for the most part. This would indeed constitute ‘permanent disability’ but the claim is manifestly false. Lang claims that circumcision increases the relative likelihood of developing erectile dysfunction later in life, and this claim merits attention, in relation to the risks and benefits of the intervention. However, to establish that circumcision was mutilation, in the strict sense, Lang would have to show that an intact foreskin was a *sine qua non*, for some aspect of sexual or reproductive functioning. The contrast here to castration or sterilisation could not be clearer. Circumcision does not (always or in general or for the most part) prevent a husband from consummating marriage and does not prevent a couple from conceiving children naturally through sexual union.

Biologically speaking, it seems reasonable to think that the foreskin in human males is a remnant of the penile sheath that is common to most mammals, and which evolved to provide a protective function. However, whether the foreskin in modern humans fulfils a necessary protective function is moot. Lang quotes with approval a statement of the American Academy of Pediatrics from 1984 that ‘the glans at birth is delicate and easily irritated by urine and feces. The foreskin shields the glans; with circumcision this protection is lost. In such cases, the glans and especially the urinary opening (meatus) may become irritated or infected...’ (2012, 111 citing AAP 1984). In a similar fashion, Fadel (2003b, 24) argues that the foreskin ‘protects the sterile urinary tract environment’. However, David and Michael Benatar (2003, 1) argue that ‘the foreskin may rather constitute a modest threat to the sterility of that environment, as evidenced by the slightly higher rates of urinary tract infection in the uncircumcised’. It is thus a matter of dispute how far an intact foreskin actually functions as a protective organ or how far removal of the foreskin might in fact be the more protective.

If circumcision does not prevent successful procreation, and if removal of the foreskin may have some protective health benefits, what of the claim that circumcision necessarily diminishes sexual pleasure and thus reduces sexual satisfaction? This claim is more difficult to measure, both because of the subjective nature of pleasure and because of the cultural and individual differences in how people find pleasure in action. Certainly there is no straightforward relationship between bodily sensitivity, ability to enjoy pleasurable activity, sexual function, and sexual satisfaction. Evidence in this area is also equivocal, with most studies showing that most men find either no difference in sexual satisfaction after circumcision or finding increased satisfaction (Kigozi et al. 2008; Krieger et al. 2008; Morris and Krieger 2013). In relation to the sexual and reproductive functions of the body as a whole, there are therefore no ‘permanent disabilities’ that are ‘always inflicted’ by IMC. This claim is hyperbole.

In the face of the absence of unequivocal evidence of loss of function, at least in general or for the most part, intactivists appeal to a priori reasoning based on the physical structure and implied functions of the foreskin. It is 'richly innervated' with 'at least ten thousand nerve endings' (Lang 2012, 103). It is 'specialized tissue that is richly supplied with blood vessels, highly innervated, and uniquely endowed with stretch receptors' (Clark 2006). However, the key question is not whether this tissue is sensitive or innervated or supplied with blood vessels, but simply whether the body can function equally well without it.

At certain points Lang seems to argue a priori or from the theological premise that the foreskin is created by God, hence the removal of the foreskin *must* be detrimental. However, this simply does not follow. Consider the example of live organ donation. If nothing in nature is superfluous, how could it ever be legitimate to remove a fully functional kidney from a healthy live donor? In fact, whereas the removal of a kidney involves risk and discomfort, it does not cause serious and inevitable harm the functioning of the body. Pope John Paul II sums up this tradition on organ donation by stating that 'a person can only donate that of which he can deprive himself without serious danger or harm to his own life or personal identity, and for a just and proportionate reason' (1991, 4). This same principle is stated in the Catechism. In relation to organ donation it is 'morally inadmissible directly to bring about the disabling mutilation or death of a human being' (CCC 2296). These statements provide a high threshold for 'mutilation' in the strict sense: it is a 'disabling mutilation' that constitutes 'serious danger or harm to [a person's] life or personal identity'. Clearly removal of a kidney is far more hazardous and intrusive than the removal of the foreskin. Yet if the former does not constitute 'mutilation' in the strict sense used in the Catechism and in recent papal encyclicals, still less does IMC constitute 'mutilation'.

Indeed, while the topic of mutilation has been discussed within Catholic moral theology for many centuries, at no point has any pope or council condemned circumcision *as mutilation*. In none of the discussion of mutilation by Thomas Aquinas nor in the writings of any other moral theologian of the medieval or early modern period has circumcision been described in these terms. In relation to circumcision the traditional Catholic understanding is clear, in the words of Gerald Kelly, 'the mutilation is slight (in fact, many moralists would not designate it as a mutilation)' (see Lang 2012, 118 citing O'Donnell 1976, 75). Thus also Vermeersch states that 'castration is mutilation, not however circumcision, or any accommodation of the body in a manner which is commonly judged to be for the sake of beauty; as when it is the custom to perforate the extreme part of the nose or ear' (1924, n.323 cited in Kanniyakonil 2005, 108). Even Healy, who is frequently cited by Catholic intactivists for his opposition to routine IMC, does not state that circumcision is 'mutilation'. His argument is rather that procedures such as skin grafts, blood transfusion, face-lifts etc. 'which are not mutilations in the strict sense of the term,' (Healy 1956, 122) nevertheless require justifying reason.

Are their justifying reasons for the risks and burdens of circumcision?

IMC constitutes an invasive intervention on the genitals of a very young child. The risks of this surgery are very low. David and Michael Benatar (2003, 5) conclude that, in a modern sterile environment, the risk of death from IMC is less than one in 500,000, that is 0.002 deaths per thousand. This risk should be set in the context of an overall rate of infant mortality in the first year of life which varies from 1.8 per thousand in Luxembourg to 15.2 per thousand in Mexico. In the United States the average is 6.7 deaths per thousand but this varies widely between different ethnic and socioeconomic groups (Kim and Saada 2013). Such variations due to environment and health related behaviours are thus several orders of magnitude greater than any increased risk to the child

due to IMC. Nevertheless, any risk of adverse effects, however marginal, requires some justifying reason.

One common justification provided for circumcision is the claim that it confers health benefits. For example, it is widely acknowledged that circumcision significantly reduces the risk of heterosexual (female to male) transmission of HIV. Randomized clinical trials conducted in Africa found risk of female to male transmission reduced by between 55% and 76% if the man was circumcised (Leibowitz, Desmond and Belin 2009, 138). The procedure is also associated with other health benefits. Leibowitz, Desmond and Belin state that meta-analyses of multiple studies show 'lower rates of urinary tract infections, lower rates of penile human papillomavirus, lower rates of penile cancer, and lower risk of chancroid and syphilis' (2009, 142).

Lang cites the 1999 policy statement of the American Academy of Pediatrics which, after a review of the evidence, concluded that 'Existing scientific evidence demonstrates potential medical benefits of newborn male circumcision; however, these data are not sufficient to recommend routine neonatal circumcision' (Lang 2012, 111 citing AAP 1999). Since Lang's article the AAP has revised its policy in the light of 'systematic evaluation of English-language peer-reviewed literature from 1995 through 2010' (Blank et al. 2012). They concluded that the current evidence 'indicates that preventive health benefits of elective circumcision of male newborns outweigh the risks of the procedure. Benefits include significant reductions in the risk of urinary tract infection in the first year of life and, subsequently, in the risk of heterosexual acquisition of HIV and the transmission of other sexually transmitted infections' (Blank et al. 2012). Thus while the AAP retains its policy that parents should determine what is in the best interest of the child, and they do not recommend routine circumcision for all male newborns, they state that 'the benefits of circumcision are sufficient to justify access to this procedure for families choosing it and to warrant third-party payment for circumcision of male newborns' (Blank et al. 2012).

In America, where for some time rates of IMC have been falling, there is thus evidence of a shift of medical opinion, at least among paediatricians and public health professionals, in favour of elective IMC. However, this attitude is in sharp contrast to medical opinion in other countries and in other specialisations.

In 2007 the British Association of Paediatric Urologists (BAPU) produced a statement on 'Management of Foreskin Conditions' (BAPU 2007). BAPU was sceptical of the allegedly beneficial effects of routine IMC and asserted that that 'There is no current evidence to support an increased risk of penile cancer, human immunodeficiency virus infection or cervical cancer in uncircumcised males. Circumcision to prevent urinary tract infection (UTI) is unproven except in boys with abnormal renal tracts' (BAPU 2007, 4). However, this assertion does not match the discussion within the body of the document where it is admitted that 'results from existing observational studies showed a strong epidemiological association between male circumcision and prevention of HIV... Randomised controlled trials [RCT] are currently under way and the results are awaited' (BAPU 2007, 9). In fact, one such RCT had already reported significant results in 2005 (Auvert et al. 2005) and two further trials reported in the *Lancet* in February 2007 (Bailey et al. 2007; Gray et al. 2007), three months before the BAPU statement was issued. This evidence was not included in the document. In relation to penile cancer, BAPU make the (unreferenced) claim that 'the risk of developing penile cancer is now almost equal in the two groups' (BAPU 2007, 9). Subsequent to this statement a systematic review and meta-analysis has shown that men circumcised in childhood or adolescence 'are at substantially reduced risk of invasive penile cancer' (Larke et al 2011, 1097). However, the BAPU statement has not been amended to acknowledge this.

It is noteworthy that, while the statement was issued 'on behalf of the British Association of Paediatric Surgeons and The Association of Paediatric Anaesthetists' (BAPU 2007, 1), six of the eight members of the committee were in fact urologists. It should also be noted that the statement is not said to be 'on behalf of' The Royal College of Paediatricians and Child Health. Indeed, it is accompanied by a decidedly equivocal endorsement by that College: 'This document addresses an important clinical area for which there are no existing guidelines or practise statements. Whilst this statement is *not evidence based or a consensus*, it provides information of relevance to paediatricians' (BAPU 2007, 1 emphasis added). It is also revealing to note the response of BAPU to the new policy statement by AAP in 2012. Rather than engage with the evidence that the AAP had presented, Rowena Hitchcock, president of the BAPU expressed disappointment with the policy because it recommended 'irreversible, mutilating surgery' (Baker 2012). This response seems to express an a priori moral judgement rather than an assessment of the clinical evidence.

It has been argued here that IMC is not 'mutilating' in the strict sense in which this term is used in recent authoritative documents of the Catholic Church. Nevertheless, as a general rule, there is wisdom in avoiding invasive procedures except where there are no less invasive techniques of equal effectiveness available. From a clinical perspective there should be a high threshold of evidence before any surgery becomes 'routine'. It is unsurprising then that a number of Catholic theologians and bioethicists have criticised the routine performance of IMC as practiced in the United States (Healy 1956, 128-129; Somerville 2000; Clark 2006; Brugger 2010). Nevertheless, there is certainly some evidence that circumcision confers certain prophylactic health benefits and many doctors, especially but not only in the United States, consider these benefits generally to outweigh the risks of the procedure.

Writing in the mid-1950s, the moral theologian Gerard Kelly observed that 'it is well to keep in mind that, like theologians, physicians also have their "schools"; and it is my opinion that scientific men, as a group, are much less tolerant of opposing views than are theologians. It seems to me that in medically debatable cases we have to allow a physician liberty, provided his own view has sound backing and that he conforms to accepted rules for consultation and has the enlightened consent of his patient' (Kelly 1956, 335). Kelly did not write this paragraph with IMC specifically in mind, but his words are directly applicable to that debate.

The BMA guidance on *The Law and Ethics of Male Circumcision* (2006) states that 'Doctors should ensure that any parents seeking circumcision for their son in the belief that it confers health benefits are fully informed of the lack of consensus amongst the profession over such benefits' (BMA 2006, 4). This is sound advice but it equally applies to those physicians who are unconvinced of the putative benefits of IMC. They should acknowledge that there are other well-informed physicians who regard the benefits of IMC to outweigh the risks. There is no consensus here for *or* against. In the face of conflicting medical views, and differences of attitude between nations and professional bodies, there should be liberty for parents to access practice that represents a reasonable body of medical opinion.

In relation to IMC for religious reasons the primary aim is not medical but it must still conform to standards of good medical practice. This requires that the procedure does not itself cause serious injury or involve excessive risk; that it is done with consent (where the person is able to give consent) or authorisation by a parent (in the case of a child who cannot consent); and must be in the best interests of the patient. A medical professional should not provide an intervention that he or she does not think would be in the best interest of the patient.

In medical law and ethics, however, at least as this is practiced in the United Kingdom, it is clear that the best interests of patients involve more than clinical benefits and 'must take into account their cultural, religious or other beliefs and values' (GMC 2013, 4, para 19). In the case of a child who cannot consent, the relevant cultural, religious or other beliefs or values are those of the parents (GMC 2013, 4, para 20). In a Catholic understanding the beliefs of the parents are of key importance because parents have the duty and thus the right 'to educate their children in conformity with their moral and religious convictions' (PCF 1983, article 5a).

The practice of IMC expresses and reinforces the bonds of identity, community and tradition in which a child is nurtured. As Christian Brugger notes, this provides an important human and religious benefit that constitutes a compelling justification for IMC: 'Since a family's faith, especially a monotheistic faith, constitutes a very serious commitment on the part of its members, a sacred rite symbolizing membership within the religious community that nurtures that faith has a high degree of importance' (Brugger 2010).

The context of fraternal solidarity

An adequate theological account of the relationship between Jewish practice and Catholic faith needs to draw on contemporary theological reflection, and especially on the teaching of recent popes and Councils. The starting point for Catholic theological reflection in this area (and thus for Catholic theological reflection on IMC) is provided by the document of the Second Vatican Council, *Nostra Aetate*. This has been further developed in the teaching of subsequent popes, especially John Paul II, Benedict XVI and Francis (CRRJ 2015). While the declaration of Florence, in the Middle Ages, drew on Paul's letter to the Galatians, as understood through Augustine, the teaching of *Nostra Aetate* balances this perspective with themes from Paul's letter to the Romans, and especially chapter 11. It should also be noticed that the Council of Florence permitted the observance of the Jewish law 'from Christ's passion until the promulgation of the gospel'. In the developing understanding of the Church, especially since the 19th century, the subjective aspect of 'the promulgation of the gospel' has increasingly come to be appreciated.

John Paul II applies this teaching of Paul (especially Romans 11.29) to the enduring reality of the Jewish people in a remarkable formula, 'the people of God of the Old Covenant, which has never been revoked' (John Paul II 1980, n.3 cited in CRRJ 2015, n.39; see also CCC 1993, n.120). According to the Pope, Christians are called upon not only to learn from Judaism as it was practiced in the time before the birth of Christ, but also to learn from the ongoing experience of the Jewish people. The enduring reality of the people of God of the Old Covenant has been 'accompanied by a continuous spiritual fecundity, in the rabbinical period, in the Middle Ages and in modern times' (CRRJ 1985, VI.1).

This shift of emphasis in the Church's theological understanding of the enduring reality of the Jewish people is evident also in the solemn intercessions of the Church on Good Friday. Rather than pray for the 'conversion' of the Jewish people (as the prayer had done previously), the prayer now has this form: 'Let us pray also for the Jewish people, to whom the Lord our God spoke first that he may grant them to advance in love of his name and in faithfulness to his covenant' (Roman Missal, Good Friday). This prayer need not be seen as a repudiation of the hope that the Jewish people may come to know Christ as the fulfilment of the covenant. However, even to the extent that the prayer implicitly includes a Christian messianic hope, it is presented not as 'conversion' (as a gentile convert must 'turn away' from idolatry) but rather as an 'advance' in fidelity to the covenant. The implication of this in relation to circumcision is that it is not enough for Catholic Christians to

acknowledge the importance of circumcision for Jews at and prior to the time of Jesus. Circumcision must be acknowledged as a sign of fidelity to a Covenant 'which has never been revoked'.

Furthermore, if the Jewish people are regarded as the 'elder brother' (John Paul II 1986, cited in CRRJ 2015, 20) of the Church, how should the younger brother react to attempts to suppress by force of law the practice of IMC? In 2011 the Archbishop Niederauer reacted by writing in support of an op-ed piece by Rabbi Gil Leeds. Niederauer stated that, 'the proposed ban on circumcision represents an unconscionable violation of the sanctuaries of faith and family by the government of San Francisco' (Niederauer 2011). Similarly, in relation to the case in Cologne the following year, 'since the start of that debate, the German Episcopal Conference had taken a position in favour of circumcision, offering in that way a significant support to our Jewish brothers and sisters' (Hoffman 2013).

In summary, the Church has never condemned circumcision as mutilation but has regarded it as a means of grace under the Old Covenant and, in the flesh of Jesus, a means of grace to the whole world. The theological significance of circumcision cannot be evaded by relying on the convenient distinction between *milah* and *periah* which is both historically insecure and fails to provide a robust rationale for any fundamental moral distinction. In any case, while it carries some risk, IMC whether *milah* or *periah*, does not inflict per se disabling mutilation, and a reasonable body of medical opinion in fact regards it as conferring some health benefits.

Thomas Aquinas regarded the baptism of children against the wishes of their Jewish parents as contrary to natural justice. By the same logic it is contrary to natural justice to prohibit IMC as this is practiced by contemporary Jews. In the light of the teaching of John Paul II, Catholics should understand the attempt to prevent Jews from circumcising their sons, not only as being contrary to natural justice but also as a direct attack on the first and irrevocable Covenant. Such attacks may be expected from the secular enemies of religious freedom but they are not compatible either with Catholic doctrine or with the natural law.

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